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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)

Implementation of Section 9)
of the Communications Act)

MD Docket No. 94-19

Assessment and Collection of)
Regulatory Fees for the 1994)
Fiscal Year)

COMMENTS OF THE PERSONAL
COMMUNICATIONS INDUSTRY ASSOCIATION

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SUMMARY

PCIA supports the Notice's proposed rules and regulations pertaining to the assessment and collection of annual regulatory fees for FCC radio licensees. However, PCIA believes that several clarifications are necessary in order to ensure the smooth and timely implementation of the proposed fee schedule.

First, the Commission must specify what constitutes a "subscriber" as certain service providers, such as Part 22 licensees and personal communications services ("PCS") participants, will be required to multiply a base fee for every one thousand subscribers. Given the FCC's past practice of using the terms "customer" and "subscriber" interchangeably, PCIA believes that the above-mentioned licensees should be permitted to compute their regulatory fees based on the number of customers on their billing list.

Second, the Commission should simplify fee payment procedures by authorizing paging licensees to aggregate subscribers across call signs and remit one annual regulatory fee per carrier system. Given the large number of call signs per paging system and the integrated nature of the network, it is impossible for carriers to divide their total number of subscribers into percentages by call sign. It is therefore imperative that these licensees be permitted to consolidate subscribers across call signs.

Third, the FCC should establish a uniform date for calculating the number of subscribers upon which the annual fee will be based. For purposes of administrative convenience, PCIA recommends that future subscriber counts be tallied on the first day of the government's fiscal year.

Finally, in the interests of achieving regulatory parity for all commercial mobile radio service ("CMRS") providers, PCIA requests Commission reevaluation of the annual fees for these services in fiscal year 1995.

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COMMENTS OF THE
PERSONAL COMMUNICATIONS INDUSTRY ASSOCIATION

The Personal Communications Industry Association ("PCIA") herewith submits its comments in response to the above-captioned Notice of Proposed Rulemaking.¹ The Commission proposes to implement its authority, pursuant to Section 9 of the Communications Act, to assess and collect annual regulatory fees to recover the costs of enforcement, policy and rulemaking, international coordination, and user information services, with respect to FCC radio licensees.² PCIA believes that the Notice raises a number of questions regarding both the calculation and filing procedures to be followed by licensees as well as the regulatory treatment of commercial mobile radio service providers. As detailed

¹ Implementation of Section 9 of the Communications Act Assessment and Collection of Regulatory Fees for the 1994 Fiscal Year, FCC 94-46 (March 11, 1994) ("Notice").

² Section 9 of the Communications Act was added by § 6003(a) of the Omnibus Budget Reconciliation Act of 1993, Pub. L. No. 103-66, Title VI, §§ 6003(a), 107 Stat. 397, and is codified at 47 U.S.C. § 159.

below, PCIA believes that several clarifications are necessary to ensure the smooth and timely implementation of the proposed fee schedule.

I. CONSISTENT WITH PAST COMMISSION RULES AND POLICIES, THE TERM "SUBSCRIBER" SHOULD BE INTERCHANGEABLE WITH "CUSTOMER" FOR PURPOSES OF DETERMINING ANNUAL FEES

The Notice proposes to adopt the initial schedule of regulatory fees contained in the Budget Act, which provides a base fee for each service or class of station from which a licensee's total fee is calculated. For certain services, the base fee is designated as being per license or call sign while for other services, the schedule requires that the base fee be multiplied by the licensee's total number of subscribers or access lines. Under the proposed fee schedule, for example, cellular and paging service providers licensed under Part 22 of the Commission's rules will be assessed an annual regulatory fee of sixty dollars per 1,000 subscribers in fiscal year 1994.³ Beginning in the 1995 fiscal year, providers of personal communications services ("PCS") will likewise be required to tender an annual payment of sixty dollars per 1,000 subscribers.⁴ No where, however, does the Commission define what constitutes a "subscriber"

³ Notice at ¶ 79.

⁴ Id. at ¶ 80.

for purposes of computing the applicable regulatory fee for these services.

Absent a uniform definition, it will be highly problematic for the Commission to determine whether licensees have reported the correct fee multiplier. In many instances, fees will have to be resubmitted after verification, adding unnecessary paperwork to an already overburdened Commission staff. Moreover, licensees who in good faith relied on an incorrect interpretation of "subscriber" may be subject to sanctions or fines for failing to remit the correct fee. To reduce the administrative burden of implementing the proposed fee schedule, PCIA thus recommends adoption of the established definition of "subscriber" as "customer."

Adoption of such a definition is consistent with the Commission's treatment of subscribers in the cable television context. Indeed, the Commission's Notice explains that in determining the regulatory fee for cable television systems -- \$370 per 1,000 subscribers or any portion thereof -- the term "subscriber" equals a member of the general public who receives service or in other words, a customer.⁵ While the Commission has not explicitly defined "subscriber" elsewhere in its rules, references to "subscribers" and "customers" in Part 22 evidence a similar meaning. For example, Basic Exchange Telecommunications Radio Service ("BETRS") is

⁵ Notice at ¶ 75, fn. 35, citing 47 C.F.R. § 76.5 (1992).

defined as a service that "provides public message communication service between a central office and fixed subscribers located in rural areas."⁶ Also in Part 22, private line service is defined as "[a] service whereby facilities for communication between two or more designated points are set aside for the exclusive use or availability for use of a particular customer and authorized users during stated periods of time."⁷ In both instances, the Commission appears to refer to individuals or members of the general public receiving service.

Similarly, while "subscriber" is not generally defined in the Communications Act of 1934, references to the term appear to connote the meaning of "customer." Telephone exchange service, for example, is defined as "service within a telephone exchange, or within a connected system of telephone exchanges within the same exchange area operated to furnish to subscribers intercommunicating service of the character ordinarily furnished by a single exchange"⁸ In this context, the language clearly equates "subscribers" with "customers." Any other interpretation, such as defining

⁶ 47 C.F.R. § 22.2 (1992) (emphasis added).

⁷ Id. (emphasis added).

⁸ 47 U.S.C. § 153(r) (1991) (emphasis added). See also 47 U.S.C. § 153(s) ("Telephone toll service means telephone service between stations in different exchange areas for which there is made a separate charge not included in contracts with subscribers for exchange service").

subscribers as central processing units ("CPUs"), would be illogical.

Finally, references to "subscribers" in recent Commission Notices of Proposed Rule Makings and related decisions implementing the Budget Act also support adoption of the "customer" base definition. Notably, the FCC explains in its Competitive Bidding Notice that auctions may apply to a particular use of the electromagnetic spectrum if the Commission determines that the principal use of that spectrum will involve, or is reasonably likely to involve, a licensee receiving compensation from subscribers for enabling them to transmit or receive communications.⁹ Such a statement evidences an intent to treat "subscribers" as paying customers. Likewise, in discussing the "interconnected service" prong of the commercial mobile radio service definition, the FCC states in its Regulatory Parity Order:

[W]e believe it is reasonable to conclude that an interconnected service is any mobile service that is interconnected with the public switched network, or service for which a request for interconnection is pending, that allows subscribers to send or receive messages to or from anywhere on the public switched network.¹⁰

⁹ Implementation of Section 309(j) of the Communications Act Competitive Bidding, 8 FCC Rcd 7635 (1993).

¹⁰ Implementation of Sections 3(n) and 332 of the Communications Act Regulatory Treatment of Mobile Services, FCC 94-31 at ¶ 55 (March 7, 1994) (emphasis added) ("Second Report and Order").

Given the Commission's past practice of defining the term, licensees may appropriately interchange "customer" with "subscriber" for purposes of calculating their annual regulatory fees. By computing their fees based on the number of customers on their billing list, Part 22 and PCS licensees will ensure a uniform and appropriate application of the fee schedule.

II. THE COMMISSION SHOULD STREAMLINE THE FEE COLLECTION PROCESS BY PERMITTING LICENSEES TO CONSOLIDATE SUBSCRIBERS ACROSS CALL SIGNS

PCIA commends the Commission for attempting, to the degree possible, to minimize the paperwork burden imposed on both its staff and on regulatees. "[O]ur goals in this proceeding are to ensure that . . . [regulatory] fees impose little or no additional paperwork burden on the public."¹¹ To this end, PCIA requests clarification that Part 22 licensees will be permitted to aggregate subscribers across call signs and remit one annual regulatory fee per carrier system. For example, at the time of payment, the carrier would submit one fee, identifying the total number of subscribers for the entire system along with information pertaining to the total number of call signs per system.

To require otherwise would be extremely burdensome and of limited utility. Paging systems consist of a large number of call signs, operating on an integrated network basis. As

¹¹ Notice at ¶ 2.

carriers have no way of ascertaining the number of subscribers per call sign, a rule mandating the submission of separate fees for each license held would unintentionally result in significant burdens upon such carriers -- most likely, resulting in their noncompliance with the rule -- without a concomitant benefit. For this reason, PCIA believes that the Commission should streamline the fee collection process by expressly authorizing the aggregation of subscribers across the total number of call signs held.

**III. THE COMMISSION SHOULD ADOPT A UNIFORM
DATE UPON WHICH LICENSEES SHOULD BASE
THEIR CALCULATIONS REGARDING THE NUMBER
OF SUBSCRIBERS**

As PCIA's recently completed 1994 PCS Market Demand Forecast indicates, services such as new PCS, paging, cellular, specialized mobile radio ("SMR"), and enhanced specialized mobile radio ("ESMR") continue to grow at a rapid rate, despite increased competition.¹² Indeed, today's over 19 million paging subscribers are predicted to grow to 36.8 million by 1998, with an anticipated 65 million units in 2003.¹³ Similarly, demand for cellular service is expected to increase dramatically from 13 million units in 1993 to 33 million and 52 million in 1998 and 2003, respectively.¹⁴

¹² PCIA 1994 PCS Market Demand Forecast, January, 1994.

¹³ Id.

¹⁴ Id.

Given that a carrier's subscriber base is likely to change significantly over the course of a year, the Commission must establish a uniform date for computing the number of subscribers upon which the annual regulatory fee will be based.

For purposes of convenience, PCIA recommends that future subscriber counts be tallied on the first day of the government's fiscal year with the fee payable not sooner than ninety days thereafter. To illustrate, under this scenario, a licensee would calculate the number of its subscribers as of October 1, and remit the fee by December 31 of that same year.

**IV. TO FURTHER ACHIEVE THE COMMISSION'S GOAL
OF REGULATORY PARITY, ALL COMMERCIAL MOBILE
RADIO SERVICE PROVIDERS SHOULD BE SUBJECT TO
THE SAME ANNUAL REGULATORY FEE**

PCIA is concerned about the disparity among the proposed annual regulatory fees for commercial mobile radio service ("CMRS") providers. Last month, the Commission released its Second Report and Order in the Regulatory Parity proceeding, implementing amended Section 332 of the Communications Act and creating a comprehensive new regulatory framework for functionally equivalent mobile services.¹⁵ As a result, many existing private land mobile radio services will be reclassified as CMRS. Yet the Notice continues to treat

¹⁵ Second Report and Order, FCC 94-31 (March 7, 1994).

common carrier and private carrier services differently, proposing to assess a fee of sixty dollars per 1,000 subscribers for common carrier paging service, while functionally equivalent private carrier paging services will be subject to a thirty-five dollar fee for a five year license term -- a mere seven dollars per year. Similarly, compared to the sixty dollar fee per 1,000 subscribers for cellular service, SMR licensees must pay only sixteen dollars per license per year, amounting to either an \$80.00 or \$160.00 annual fee, depending upon the length of the license term.

PCIA understands the FCC's concern that adjustments to the statutory fee schedule may not be made until after the 1994 fiscal year.¹⁶ Thus, the Commission does not anticipate that "modifications to the schedule will result in current private land mobile radio licensees being subject to different fees until [fiscal year] 1995 or later."¹⁷ Without comparable treatment of all new and existing PCS participants, the Commission's competitive ideal of maximizing opportunities for entrepreneurs to bring innovative and feature rich services to the American public at affordable prices, cannot be realized. Accordingly, PCIA respectfully requests that the Commission reevaluate these fees at the earliest opportunity, beginning in fiscal year

¹⁶ Notice at ¶ 7.

¹⁷ Id. at fn. 10.

1995, in order to speed regulatory symmetry between similar mobile services.¹⁸

V. CONCLUSION

PCIA supports the Commission's proposed regulatory fee regime. PCIA believes, however, that the Commission should address the issues detailed above in order to aid licensees in calculating and remitting their applicable annual regulatory fees. Specifically, PCIA recommends adoption of the "customer" definition of subscriber; streamlining of the fee collection process to permit licensees to consolidate subscribers across call signs; and adoption of a date certain upon which licensees may base their calculations regarding the number of subscribers. In addition, PCIA requests that

¹⁸ At the very least, the Commission should readjust its annual regulatory fee schedule before the grandfathering period for reclassified private land mobile licensees expires in 1996.

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the Commission reevaluate the proposed fee schedule in fiscal year 1995 to bring the annual fees of CMRS providers into line.

Respectfully submitted,

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